

ESTTA Tracking number: **ESTTA540506**

Filing date: **05/29/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Golden Krust Patties, Inc.
Granted to Date of previous extension	05/29/2013
Address	3958 Park Avenue Bronx, NY 10457 UNITED STATES
Attorney information	Glenn S. Bacal Bacal Law Group, P.C. 6991 East Camelback Road, Suite D-102 Scottsdale, AZ 85251 UNITED STATES glenn.bacal@bacalgroup.com,jamie.tuccio@bacalgroup.com,david.andersen@bacalgroup.com Phone:480-245-6233

### Applicant Information

Application No	85523310	Publication date	01/29/2013
Opposition Filing Date	05/29/2013	Opposition Period Ends	05/29/2013
Applicant	Dimension Hill Foods LLC 524 Union Street #75 San Francisco, CA 94133 UNITED STATES		

### Goods/Services Affected by Opposition

Class 030. First Use: 2011/09/01 First Use In Commerce: 2011/09/01  
All goods and services in the class are opposed, namely: Bakery desserts; Bakery goods; Brownies; Cakes; Chocolate mousse; Dough; Pastries; Pies; Quiche; Tarts

### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2994753	Application Date	05/25/2004
Registration Date	09/13/2005	Foreign Priority Date	NONE
Word Mark	GOLDEN KRUST CARIBBEAN BAKERY & GRILL		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 043. First use: First Use: 1990/01/00 First Use In Commerce: 1990/01/00 restaurant services featuring caribbean style foods

U.S. Registration No.	2651784	Application Date	11/20/2001
Registration Date	11/19/2002	Foreign Priority Date	NONE
Word Mark	GOLDEN KRUST PATTIES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 030. First use: First Use: 1993/08/01 First Use In Commerce: 1993/08/01 Meat, chicken, seafood and vegetable turnovers		

U.S. Registration No.	2966992	Application Date	05/20/2004
Registration Date	07/12/2005	Foreign Priority Date	NONE
Word Mark	GOLDEN KRUST		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 1995/01/00 First Use In Commerce: 1995/01/00 Restaurant franchising; franchising, namely consultation and assistance in business management, organization and promotion; franchising, namely, offering technical assistance in the establishment and/or operation of restaurants		

U.S. Registration No.	2007993	Application Date	08/14/1995
Registration Date	10/15/1996	Foreign Priority Date	NONE
Word Mark	GOLDEN KRUST PATTIES, INC. "HOME OF THE WORLD'S BEST PATTIES!"		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 029. First use: First Use: 1993/08/00 First Use In Commerce: 1993/08/00 food patties, namely beef, chicken, vegetable, shrimp, calaloo, soya, and meatloaf		

Attachments	FINAL Notice of Opposition (Vive La Tarte).pdf(223730 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by USPS Express Mail Post Office to Addressee on this date.

Signature	/Glenn S. Bacal/
Name	Glenn S. Bacal
Date	05/29/2013

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Golden Krust Patties, Inc.

Opposer,

v.

Dimension Hill Foods LLC dba Vive la  
Tarte

Applicant.

Opposition No. \_\_\_\_\_

Serial No.: 85523310

For the mark:



Published for Opposition:  
January 29, 2013

**NOTICE OF OPPOSITION**

Opposer Golden Krust Patties, Inc. (“Opposer” or “Golden Krust”) will be harmed by registration of the applied for mark VIVE LA TARTE GOLDEN CRUST (& design) (“Applicant’s Golden Crust Mark”) that is the subject of Application Ser. No. 85523310 (the “Application”) filed by Dimension Hill Foods LLC dba Vive la Tarte (“Applicant”), and Opposer hereby opposes the Application on the basis that Applicant’s Golden Crust Mark is likely to cause confusion with Opposer’s registered marks for and incorporating GOLDEN KRUST®.


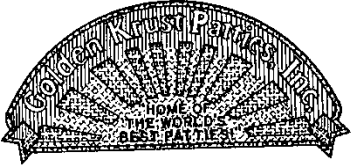
**The Parties**

1. Opposer is a New York corporation with its principal place of business at 3958 Park Avenue, Bronx, New York 10457.

2. On information and belief, Applicant is a California limited liability company with its principal place of business at 524 Union Street #75, San Francisco, California 94133.

**Opposer's Registration and Use of Its GOLDEN KRUST® Marks**

3. Opposer is the owner of valid and subsisting federal registrations for marks for or incorporating GOLDEN KRUST® (collectively, the “GOLDEN KRUST® Marks”):

Mark	Reg. No.	Goods/Services
	2994753	IC 043: restaurant services featuring caribbean style foods.
GOLDEN KRUST PATTIES	2651784	IC 030: Meat, chicken, seafood and vegetable turnovers.
GOLDEN KRUST	2966992	IC 35: Restaurant franchising; franchising, namely consultation and assistance in business management, organization and promotion; franchising, namely, offering technical assistance in the establishment and/or operation of restaurants
	2007993	IC 029: Food patties, namely beef, chicken, vegetable, shrimp, calaloo, soya, and meatloaf

4. Below is the Opposer's Golden Krust Caribbean Bakery & Grill and design Mark, as shown in color, which Opposer has used for decades, and which incorporates the color **orange** and a circular sun element:



5. Orange is the primary and predominant color used in the design element of the Golden Krust Caribbean Bakery & Grill and design Mark.
6. Opposer opened the first GOLDEN KRUST® bakery and restaurant over 25 years ago.
7. Opposer has used one or more of the registered GOLDEN KRUST® Marks in connection with the goods and/or services covered by Opposer's registrations for the GOLDEN KRUST® Marks for over 25 years.
8. Since opening, Opposer has expanded the use of GOLDEN KRUST® to more than 100 restaurants in nine states and on products sold in retail locations throughout the country, including in the State of California where Applicant is based.
9. Among the various goods available at genuine GOLDEN KRUST® locations are a full line of bakery items including over two dozen different pastries, cakes and breads.
10. Opposer has regularly taken action to enforce its rights in the GOLDEN KRUST® Marks against third-party users of marks that are likely to cause confusion with the GOLDEN KRUST® Marks.

## **Applicant's Use of and Attempt to Register**

### **Applicant's Golden Crust Mark and Opposer's Objection**

11. On information and belief, Applicant began using the mark Applicant's Golden Crust Mark well after Opposer had begun using and had registered its GOLDEN KRUST® Marks.

12. On information and belief, Applicant has used "GOLDEN CRUST" separate and apart from the mark as applied for.

13. On information and belief, Applicant has used "GOLDEN CRUST" separate and apart from VIVE LA TARTE, as well as in combination with VIVE LA TARTE.

14. When Applicant has used VIVE LA TARTE in combination with GOLDEN CRUST, sometimes GOLDEN CRUST has appeared before and sometimes it has appeared after VIVE LA TARTE.

15. On information and belief, Applicant has used and is using the following logos on or in connection with the advertising or sale of its bakery products (referred to hereafter as the "V Golden Crust Logos"):



16. In the V Golden Crust logos the only words that could be protected as a trademark are Golden Crust.

17. In the V Golden Crust Logos, there is no use of Vive La Tarte.

18. Below is an additional example of how Applicant has used the phrase GOLDEN CRUST separate and apart from VIVE LA TARTE in photos posted by Applicant on the internet:



19. On January 23, 2012, Applicant filed an application (Ser. No. 85523310) (the “Application”) with the USPTO to register Applicant’s Golden Crust Mark in Class 30 for “bakery desserts; bakery goods; brownies; cakes; chocolate mousse; dough; pastries; pies; quiche; and tarts” claiming the color orange:



20. Orange is the primary and predominant color used in the Applicant’s Golden Crust Mark.



### **Standing**

21. Opposer has used its GOLDEN KRUST® Marks in commerce prior to the date that Applicant first applied to register Applicant's Golden Crust Mark in connection with the same kinds of goods.

22. Applicant's use and registration of Applicant's Golden Crust Mark is likely to cause confusion with Opposer's GOLDEN KRUST® Marks.

23. Applicant's use and registration of Applicant's Golden Crust Mark will impair the value of Opposer's rights in the GOLDEN KRUST® Marks.

24. Applicant's use and registration of Applicant's Golden Crust Mark will cause harm to Opposer and its business.

### **Likelihood of Confusion**

25. Applicant's use and registration of Applicant's Golden Crust Mark is likely to cause confusion with Opposer's GOLDEN KRUST® Marks.

26. Applicant's Golden Crust Mark is substantially similar in appearance, sound, connotation, meaning, and commercial impression to Opposer's GOLDEN KRUST® Marks.

27. The phrase GOLDEN CRUST is audibly identical to the dominant GOLDEN KRUST words in the GOLDEN KRUST® Marks.

28. Applicant uses the same or a very similar primary color in its use of the Applicant's Golden Crust Mark, namely orange, as Opposer has long used in its presentations of Opposer's Golden Krust Caribbean Bakery & Grill and design Mark.

29. The addition of Vive La Tarte in Applicant's Golden Crust Mark is insufficient to avoid a likelihood of confusion with Opposer's GOLDEN KRUST® Marks.

30. The use of an orange colored circular element in Applicant's Golden Crust mark increases the likelihood of confusion with the color and design version of Opposer's GOLDEN KRUST® Mark, which uses an orange colored, semi-circular element.

31. Applicant's Application to register Applicant's Golden Crust Mark covers goods that are substantially similar or identical to the goods with which Opposer has long used and/or registered its GOLDEN KRUST® Marks, including bakery and baked goods.

32. On information and belief, Applicant sells its goods under Applicant's Golden Crust Mark to the same kinds of consumers to whom Opposer and its licensees offer and sell their goods and services under the GOLDEN KRUST® Marks.

33. On information and belief, Applicant markets and advertises Applicant's goods under Applicant's Golden Crust Mark in the same channels of trade that Opposer and its licensees market and advertise their goods and services under the GOLDEN KRUST® Marks, including without limitation Internet websites accessible nationwide as well as social media such as Facebook and Twitter.

34. On information and belief, Applicant offers and sells its goods under Applicant's Golden Crust Mark in the same or similar channels of trade in which Opposer and its licensees offer and sell their goods and services under the GOLDEN KRUST® Marks, including without limitation one or more retail store bakeries.

35. Applicant's use of Applicant's Golden Crust Mark trades on Opposer's goodwill in its GOLDEN KRUST® Marks.

36. Applicant's Golden Crust Mark so resembles Opposer's GOLDEN KRUST® Marks so as to make it likely, when applied to Applicant's goods, to cause mistake and confusion among, and to deceive, the trade and the public, with consequential injury to Opposer.

37. On information and belief, Applicant was on constructive notice of Opposer's GOLDEN KRUST® Marks prior to filing the Application and selecting Applicant's Golden Crust Mark.

38. On information and belief, Applicant was aware of Opposer's use of its GOLDEN KRUST® Marks prior to filing the Application and selecting Applicant's Golden Crust Mark.

39. On information and belief, Applicant was aware of Opposer's registrations for its GOLDEN KRUST® Marks, or some of them, prior to filing Applicant's application to register Applicant's Golden Crust Mark.

### **Conclusion**

40. Applicant is not entitled to a registration for Applicant's Golden Crust Mark.

41. Applicant's Golden Crust Mark is likely to cause confusion with Opposer's prior registered GOLDEN KRUST® Marks.

42. Opposer will be damaged by Applicant's registration of Applicant's Golden Crust Mark.

THEREFORE, Opposer respectfully requests that Application Serial No.  
85523310 be refused registration.

Respectfully submitted this 29<sup>th</sup> day of May, 2013.

BACAL LAW GROUP, P.C.

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Certificate of Mailing or Transmission Pursuant to 37 C.F.R. § 1.8

Application No.: 85523310  
Mark: VIVE LA TARTE GOLDEN CRUST and design  
Opposer: Golden Krust Patties, Inc.  
Type of Filing: Notice of Opposition

I hereby certify that this Notice of Opposition is being filed electronically with the United States Trademark Trial and Appeal board pursuant to 37 C.F.R. §1.8.

I hereby further certify that this Notice of Opposition is being sent via express mail addressed to correspondent of record as required by the rules:

Julie Vandermeersch, General Manager  
Dimension Hill Foods LLC  
524 Union Street #75  
San Francisco, CA 94133

\_\_\_\_\_  
/s/ Jamie Tuccio

\_\_\_\_\_  
May 29, 2013

Date